

# Literature survey on pregnancy and maternity discrimination for the Northern Ireland Equality Commission.

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## **Executive summary**

### **Workforce patterns**

In Northern Ireland and Great Britain there has been a progressive feminisation of the workforce with the proportion of women becoming economically active increasing at a much greater rate than that of men. It still remains the case however that women aged 25-34 years are much more likely to be economically inactive when compared to men, due to family/home commitments.

A much greater proportion of women work part-time, when compared to men. For many women working part time is a matter of choice and necessity with the most common reason for doing so being to look after children.

The vast majority of lone parents with dependent children are women as they are much more likely to take the main caring role when relationships break down. Lone mothers with a young child are much less likely to be in work than couples with similar age children.

### **Disadvantages suffered at work while pregnant and on maternity leave**

The Equal Opportunities Commission in 2005 found that almost half of the women that they surveyed experienced some sort of disadvantage in relation to work as a result of pregnancy or maternity.

There is some evidence that only a small minority of those affected ever seek redress. Indeed there is also some evidence that many women did not know of their legal entitlement to leave.

The disadvantage can take the form of dismissal, unpleasant workplace treatment, employer inflexibility and poor employer practice, especially in relation to health and safety.

The evidence appears to be that many employers are supportive during pregnancy but a significant minority were unsupportive and gave no consideration to the pregnant employee or their needs. A significant minority of women felt that their relationship with their boss deteriorated after announcing their pregnancy or on their return to work.

A minority of women felt that they had suffered disadvantage whilst being on maternity leave including missing out on a pay rise or promotion.

Many women return to jobs for which they are over qualified, especially in those sectors where women's employment predominates. This is especially so for those who returned to part time work. Research shows that because of the limited part time options available in more skilled jobs, many women compromise by entering lower level jobs at reduced pay levels.

Women returners are also liable to negative treatment by some employers such as not being allowed sufficient time off to cope with child related problems; lower pay rises than peers or a salary reduction; reluctance to allow flexible working patterns.

### **Career break and motherhood penalties**

For many women childbirth results in downward mobility, lower rates of employment and a lower income. Much of this is due to the take up of part time work after maternity leave.

The pay penalty can last a lifetime and there is some evidence that women never recover that which has been lost. Women who leave the labour market temporarily not only fall behind when they return to work, but they never actually catch up.

Estimates include that of a wage penalty of some 16 per cent for one year of child care interruption with more if the returner changes employer on return to the labour market. Some research indicates that the UK has one of the highest part time pay penalties in Europe, partly explained by significant occupational segregation of part time and full time work.

The lack of affordable child care makes full time work unattractive for many women. This is largely because the additional child care costs that would be incurred would leave mothers with little extra financial benefit.

One report recommended three actions that would significantly improve the working lives of mothers with young children. These were greater access to affordable childcare; access to more flexible employment opportunities; and access to well paid, high skilled employment on a part-time basis. The evidence found in this literature survey suggests that these developments would be the minimum actions needed to improve the situation of pregnant workers, those on maternity leave and those with dependent children.

The sharing of child care leave is seen as an important step also.

## 1. Context

Special measures to benefit pregnant women and women who had recently given birth were first introduced in the United Kingdom during the post-Second World War period. The National Insurance scheme, in 1948, introduced a maternity allowance for women contributors who gave up work to have a baby. This was paid for 13 weeks. The period was increased to 18 weeks in 1953. In 1975 the Employment Protection Act introduced six weeks' maternity pay for women who contributed to the Maternity Fund. This maternity pay equalled 90 per cent of normal weekly earnings less the amount of the maternity allowance. Maternity allowance and maternity pay were amalgamated in 1987 and became statutory maternity pay. This is paid by employers, who then recover their costs by deductions from their tax and national insurance contributions. Small employers can claim an additional amount in respect of such pay.<sup>1</sup>

The Employment Protection Act 1975 also introduced the right to return to work for up to 29 weeks after confinement for women who had been employed for two years continuously with the same employer. In 1994, changes were made as a result of the Pregnant Workers Directive. These changes concerned the right for women to have at least 14 weeks' maternity leave, regardless of their length of service or hours of work. Two weeks of this were to be compulsory. They also concerned the payment to women of an 'adequate allowance', equal at least to State rules on sickness benefit, during their maternity leave period, although this could be limited to those with at least one year's continuous service.

Now the Equality Act 2010 contains specific provisions, for England, Scotland and Wales, which protect women at work from discrimination because of pregnancy or maternity leave. There is also a separate statutory regime which sets out pregnant employee rights in relation to health and safety, time off, maternity leave etc contained for the most part in the Maternity and Parental Leave etc. Regulations 1999.<sup>2</sup> The Employment Statutory Code of Practice gives these examples, drawn from case law, of actions that would amount to pregnancy and maternity discrimination: failure to consult a woman on maternity leave about changes to her work or about possible redundancy; disciplining a woman for refusing to carry out tasks due to pregnancy related risks; assuming that a woman's work will become less important to her after childbirth and giving her less responsible or less interesting work as a result; depriving a woman of her right to an annual assessment of her performance because she was on maternity leave; and excluding a pregnant woman from business trips. The Act outlaws both direct discrimination and unfavourable treatment of workers on the grounds of pregnancy and maternity. The Code of Practice states that unfavourable treatment on grounds such as the fact that, because of her pregnancy, the woman will be temporarily unable to do the job for which she is specifically employed whether permanently or on a fixed-term contract; the pregnant woman is temporarily unable to work because to do so would be a breach of health and safety regulations; the costs to the business of covering her work; any absence due to pregnancy related illness; and her inability to attend a disciplinary hearing and other performance issues due to morning sickness or other pregnancy-related conditions.

In Northern Ireland protection is contained in the Sex Discrimination (Northern Ireland) Order 1976.<sup>3</sup> Section 5A (1) provides that a person discriminates against a woman if at a time in a protected period, and on the ground of the woman's pregnancy, the person treats her less favourably. Northern Ireland legislation does not contain specific examples of actions that may constitute unfavourable treatment. It is unlikely that this makes a difference because generally discrimination on the grounds of pregnancy or maternity has long been regarded by the courts as direct sex discrimination. Two early cases at the European Court of Justice which clearly spelt out the protection were *Dekker and Webb v EMO*.<sup>4</sup> It is clear that, in pregnancy discrimination claims, there is no need for a comparable male. Pregnancy is a condition unique to women and any discrimination on the grounds of pregnancy was, and is, likely to be sex discrimination. EU law, including the Pregnant Workers Directive (92/85/EEC)

and the Equal Treatment Directive (2006/54/EC), gives women who are pregnant or on maternity leave protected status in employment. For example, Article 10 of the Pregnant Workers Directive prohibits the dismissal of pregnant workers and workers on maternity leave other than in exceptional circumstances not connected with their pregnancy or maternity leave.<sup>5</sup>

Examples of the attitudes that help create discrimination and disadvantage are shown in an interesting and revealing survey contained in a United Kingdom (UK) government report,<sup>6</sup> which showed that men were less likely to think that women who take time out of work to have children are as ambitious towards work as women who do not. Similarly, men were also less likely to think that women who work flexibly have the same amount of ambition towards work as those who do not. Women respondents displayed more positive attitudes particularly in relation to part time work and believed that part-time workers were as capable of delivering demanding pieces of work as full-time workers and that part-time workers were as capable of delivering to challenging timescales as full-time workers. Although the majority of the respondents agreed that their current employer was supportive of working parents (57 per cent), some 21 per cent said that they or someone they know has been told by their manager that a family-friendly work pattern reduces the chance of promotion.<sup>7</sup>

A later Great Britain (GB) wide survey<sup>8</sup> found that only one quarter of parents thought that childcare was the primary responsibility of the mother. The reality, however, was different because, in practice, three quarters of mothers surveyed stated that they had primary responsibility for childcare in the home. There were also gender differences in parents' perceptions. When asked whether it is the parent who earns the most who should remain in the labour force, men were much more likely to agree (54 per cent) than women (42 per cent). Over half of mothers are a source of child care support for pre-school children, compared to just 18 per cent of men, but parents spread the caring net more widely. Nearly a quarter use private nursery / day care at least once a week and a fifth use help provided by the children's grandparents. Lone parents, according to the report, are particularly likely to draw upon extra family support: Some 23 per cent receive support from grandparents and 15 per cent from other family members, compared to 19 per cent for dual family units with grandparents and nine per cent with other family members.

## **2. Workforce patterns**

### *The feminine work force*

There are an estimated 390,000 women (aged 16+) in Northern Ireland who are said to be economically active. This compares with 469,000 men (in GB the comparable figures are 14.5 million women and 16.8 million men).<sup>9</sup> There has been a progressive feminisation of the workforce with the number of economically active women increasing by 30.4 per cent since 1995 compared to an increase of 15.9 per cent of economically active men. It is a process that is repeated in the rest of the UK with an increase of 18.8 per cent of the female GB workforce over the same period compared to a figure of 10.5 per cent for males. The result is that a larger proportion of the workforce is now female, e.g. the gap between male and female levels of employment has narrowed considerably. The difference in employment rates of males and females (aged 16-64 years), in Northern Ireland, is now 7.4 percentage points compared to 13.3 percentage points some ten years ago.<sup>10</sup> Despite this Northern Ireland has the lowest female employment rate when compared to Wales, Scotland or the English Regions; some 62 per cent compared to over 70 per cent for Scotland, the East of England, South East England and South West England.<sup>11</sup>

For the UK as a whole the difference in the employment rate between males and females is 10 per cent (78.1 per cent for men and 68.1 per cent for women).<sup>12</sup> The statistics for the age group 25-34 years are somewhat different. We focus on this age group because the

standardised average age at which women give birth in England and Wales was 29.8 years and the standardised average age for having the first child was 28.1 years, although it is interesting and relevant to note that almost half (49 per cent) of children are born to women aged 30 years plus (for the year 2012).<sup>13</sup> The figures for Northern Ireland also show that the majority of children are born to women aged 25-34 years.<sup>14</sup> Thus the overall employment rate for the UK is 73.1 per cent and the rate for the 25-34 years age group is 88.4 per cent for men and 73.3 per cent for women, a gap of 15.1 per cent. The inactivity rate shows an even more marked picture. The overall inactivity rate is 21.7 per cent, but in the 25-34 age bracket it is 6.6 per cent for men and 21.6 per cent for women. Women, therefore, are much more likely to be out of the workforce during their 20s and 30s than men; periods when many people establish careers and develop relevant skills.<sup>15</sup>

According to the Equality and Human Rights Commission women aged 25-34 are much more likely to be inactive due to looking after the family or home (70 per cent of women gave this reason compared to 10 per cent of men in the same age group). Northern Ireland statistics reveal that, overall, some 36 per cent of working age inactive women were unavailable for work due to family/home commitments.<sup>16</sup> Perhaps unsurprisingly given these kinds of statistics, women in GB with children under the age of 16 are over four times as likely as men with children up to the age of 16 to be inactive (26 per cent compared with 6 per cent). The figures for men and women without children under the age of 16 show no significant difference in the rate of inactivity.<sup>17</sup>

There is evidence of the importance of female employment to the living standards of families in the low to middle income group especially. In 1968, for example, some 86 per cent of employment income in low to middle income households came from men and 14 per cent from women. By 2008, these shares were 63 per cent and 37 per cent respectively.<sup>18</sup> This is because over recent years there has been a shift in employment from men to women and more recently, wage growth amongst women has increased faster than amongst men. According to the Fawcett Society this growth is

due to a range of factors, in particular: declining wages and the increasing economic imperative for women to work as a single wage often no longer supports a family; the growing appetite amongst women to engage in public life and to attain economic independence; increasing levels of employment rights – such as maternity leave and pay – that have better enabled women to balance work and family responsibilities and; state investment in childcare.<sup>19</sup>

In this regard mothers have done better than women without children, whilst wage growth among fathers has been significantly lower than amongst comparable men. This trend has meant that the growth in the share of child poverty accounted for by working households is being driven by male breadwinner families.<sup>20</sup>

### *Part time work*

A particular characteristic of the female workforce is the proportion that works part time.<sup>21</sup> The result is that any negative attitudes to part time work are likely to disproportionately impact on women workers. Unadjusted figures for Northern Ireland show that 39.2 per cent of female employees work part-time compared to 11.1 per cent of males. It has to be noted that proportion of both the male and the female workforce that works part time has increased over the last ten years (the figures were 8.0 per cent for males and 37.0 per cent for females). The proportions working full time and part time are a reflection of the overall UK pattern. Overall there are approximately 8 million women working full time and 6 million working part time.<sup>22</sup> Full time hours for women averaged at 34.4 hours compared to men's 39.5 hours. Part time hours for women averaged 15.9 hours compared to men's 16.2 hours.<sup>23</sup>

For many women working part time is a matter of choice and necessity. In Northern Ireland some 68 per cent of female employees who work part-time say they do not want a full-time job (compared to 73 per cent of females in GB).<sup>24</sup> An earlier GB study found that the most frequent reason cited by women for working part time was looking after children (42 per cent).<sup>25</sup>

There is a high correlation between employment rates and caring for dependent children. Not only do women have much lower employment rates than men when there are dependent children, but there is also a correlation between the age of the mother and the likelihood of employment inactivity. The following table is taken from a study on *Women in the Labour Market*.<sup>26</sup>

### Employment rates for men and women living with and without dependent children

Age	Men		Women	
	With	without	with	without
16-24	69.5	48.6	35.8	51.1
25-34	88.6	83.6	63.0	85.5
35-49	92.1	82.0	75.0	79.7

It is really interesting, given the increasing age at which women have children, to note the much smaller gap in employment rates for women with or without dependent children in the oldest age group in this table. Generally 'the employment penalties faced by women as a group have steadily reduced over time. This down-trend did not affect single women, nor did it much affect women with a partner but no children. But the most disadvantaged women – mothers, especially of young children – are much less disadvantaged now than they were three decades ago, even though they still have the lowest employment rates'.<sup>27</sup>

### *Lone parents*

There were nearly 1.9 million lone parents with dependent children in the UK in 2013, a figure which has grown from 1.8 million in 2003. Lone parents with dependent children represented 25 per cent of all families with dependent children in 2013, similar to 2003. In 2013, women accounted for 91 per cent of lone parents with dependent children and men the remaining 9 per cent. These percentages have changed little over the previous decade. Some 58 per cent of lone parents with dependent children have only one child which is higher than other family types. Only 11 per cent of lone parents have three or more children. Women are more likely to take the main caring responsibilities for any children when relationships break down, and therefore become lone parents.<sup>28</sup>

The Office for National Statistics (ONS) study of *Women in the Labour Market*<sup>29</sup> showed that the age of the child and the relationship status of the mother are important factors in whether they are in work or not. The study reports:

For lone mothers whose youngest child was aged up to three, just 39% were in work, compared with 65% of couples with children in the youngest age group; this was a gap of 26 percentage points. For mothers whose youngest child was at primary school age, between four and ten, employment rates were higher at 74% for those in a couple and 61% for those who were a lone parent, a much narrower gap of 13 percentage points. The narrowing of the gap may reflect that lone mothers have fewer opportunities to go to work when their youngest child is not in school as couples can share childcare with their partner. When the youngest child is of school



age, lone parents have greater opportunity to enter a job. The employment rate gap between mothers in couples and on their own narrowed further where the age of the youngest dependent child was between eleven and eighteen, with employment rates of 80% for mothers in a couple and 74% for lone mothers. In recent years, comparing back 2013 with 2008 there has been an increase in the employment rates for lone parents with children aged four and over, while the corresponding rates for couples have remained similar. This has meant the gap between the rates for couples and lone parents has narrowed.

This narrowing of the employment rate gap between lone parents and couple parents may be important as an indicator of a long term trend. Between 1997 and 2009, for example, the employment rate for lone parents increased from 44.6 per cent to 57.3 per cent whilst the employment rate for all other family types fell from 74.1 per cent to 73.8 per cent.<sup>30</sup>

Importantly though worklessness is still an issue. Some 37 per cent of all households with dependent children were workless lone parent households compared to some 4.9 per cent being workless couple households with dependent children. There has also been a narrowing of the employment rate gap, according to an ONS study, between women with dependent children and women without; from 5.8 per cent in 1996 to 0.8 per cent by the end of 2010.<sup>31</sup> One factor which appears to have contributed to this is the 'slight shift in the age of mothers, with more women having children later in life and older mothers more likely to be in employment'.<sup>32</sup> The highest percentage of mothers in the UK is in the 35-49 year age group. Compared to all age groups for women with pre-school children, employment rates are highest for this age group.<sup>33</sup>

### **3. Disadvantages suffered at work during pregnancy and maternity.**

#### *General*

A 2005 survey by the Equal Opportunities Commission (EOC)<sup>34</sup>, defined discrimination within the context of women's perceptions of the way in which they were treated.<sup>35</sup> It defined the discrimination in terms such as:

*Dismissal* - where women were either dismissed, made redundant or treated so badly that they had to leave as a result of their pregnancy or on their return to work;

*Financial loss* - as for dismissal but also including those who experienced detrimental practice with regard to promotions, salaries or non-salary benefits;

*Tangible discrimination* - as for financial loss but also including those who were threatened with dismissal or redundancy or put under pressure to hand in their notice, discouraged from attending ante-natal sessions, were given unsuitable hours or workloads, were unfairly criticised, were denied access to training, whose employers were unwilling to grant maternity leave, who were pressured to start maternity leave before they were ready or who were not allowed to return to the same job after maternity leave.

*Unpleasant workplace treatment* - as for tangible discrimination but also including those who were treated with less respect, received unpleasant comments at work, faced dispute about their return to work or felt that their employer was unsupportive either when they were pregnant or on their return to work.

*Poor employer practice: risk assessments* - where no risk assessment was conducted or risks that were identified either by the employer or the employee were not addressed.

*Employer inflexibility after return to work* - where women were not allowed time off to cope with an ill child, requested more flexible working and were denied or would have

liked to work more flexibly but did not make a request because they were sure it would be denied.

Quantitative evidence of discrimination against women who are pregnant or who have young children is difficult of course to come by. Some survey evidence was provided in the report by the EOC in 2005 which stated that, from its own analysis, nearly half of the 1000 women surveyed said that they experienced dismissal or some disadvantage at work because of pregnancy. Some 7 per cent said that they had lost their jobs as a result of their pregnancy, but that it was far more common for women to be treated so badly that they felt forced to leave. One result was that women who lost their jobs before going on maternity leave lost on average some £1500 in maternity pay. One further result, according to the report, was that another 14 per cent of women suffered a financial penalty as a result of pregnancy or maternity leave such as failing to get a promotion, losing out on pay rises or having their salary or benefits reduced. Other disadvantages suffered included various types of unfavourable treatment such as being given unsuitable or dangerous workloads, being denied access to training or being discouraged from attending antenatal classes during working hours. The EOC report summed up the situation as follows:

Around 440,000 working women are pregnant in Great Britain each year. Almost half are likely to experience some form of disadvantage and more than seven out of ten are likely to suffer in silence. More than 30,000 will be forced out of their jobs and left without work, an income, perhaps even access to benefits – just for getting pregnant. Only a tiny proportion seeks any advice or redress. If current trends continue, a million pregnant women are likely to experience discrimination at work over the next 5 years.<sup>36</sup>

As part of the research for this report the EOC commissioned a qualitative study of women's experiences.<sup>37</sup> Some 35 women were interviewed for this study and the following were the key findings:

- those who experienced pregnancy-related discrimination saw it as a result of problems with an individual manager or colleague rather than an organisational or society-wide problem.
- there was evidence that both employers and employees may be poorly informed about pregnancy-related rights, indicating that greater publicity about these rights could be beneficial.
- there was also evidence of poor employer practice with regards to carrying out risk assessments.
- only a small proportion of women who faced difficulties took proceedings against their employer. This was mainly because of other pressures at the time (i.e. pregnancy) and a concern that action may impact on their work reputation, rather than the quality or availability of suitable advice.
- negative treatment at work appeared to impact on women both at the time and on their future attachment to the labour market.
- 
- there was some evidence that women who had experienced pregnancy-related discrimination were less likely to go back to work for their old employer, with some women less likely to return to work at all.
- although the research was conducted with women from a wide range of backgrounds and social groups, the experiences reported were largely similar.

One of the conclusions of the analysis discussed the impact on the women of their experiences:

In almost all cases there was also evidence of a longer-term impact particularly on attachment to the labour market and future employment plans. Some women had lost confidence in their abilities and moved into lower paid, less demanding work while others had been deterred from returning to work altogether. The majority of those interviewed also reported that they would now aim to work for employers with particular characteristics such as family-friendly policies and flexible working hours.

The 2005 EOC report showed that of those women who lost their jobs as a result of pregnancy discrimination, 8 per cent took formal action and only 3 per cent took their claims to an employment tribunal. Women now faced 'significant barriers to exercising their rights including: competing demands of motherhood, access to advice services, employment tribunal fees, the abolition of the questionnaire procedures and negative attitudes towards maternity rights'.<sup>38</sup>

There have not been any further authoritative investigations into the disadvantages associated with pregnancy or maternity since then, although the UK government has now provided £1.000.000 of funding for the London based Equality and Human Rights Commission to carry out a new one. In announcing this funding<sup>39</sup> the UK government Minister for Women and Equalities, Maria Miller MP, stated that 'It's unacceptable that women suffer from discrimination when they become pregnant and yet many are saying that they are treated unfairly at work because of it'. The accompanying press release pointed out that there had been more than nine thousand pregnancy discrimination claims brought against UK employers since 2007. The announcement also stated that the Equality, Advisory and Support Service set up in 2012 had reported that 1 in 20 cases that it had handled in its first year of operation had been from people contacting them about pregnancy discrimination.<sup>40</sup>

There have, however, been two investigations by the Equality and Human Rights Commission into different employment sectors. One concerned the meat and poultry processing sector.<sup>41</sup> The report stated that poor treatment of pregnant workers was raised in about one quarter of 140 face-to-face interviews with meat processing workers in 15 different locations across England and Wales, of which 20 were British and 120 were migrant workers. Interviewees reported the following experiences:

- summary dismissal of pregnant workers; some agency staff were given no further work after managers realised that they were pregnant;
- pregnant workers being forced, under threat of losing their job, to continue work that posed a risk to their health and safety, including heavy lifting and extended periods of standing;
- instances where pregnant women were prevented from leaving the production line to go to the toilet;
- lack of health and safety risk assessments;
- miscarriages attributed to lack of adjustments to work;
- two interviewees also mentioned pregnant workers being sexually harassed in the workplace.

Employment agencies were also under pressure not to send pregnant workers. One agency manager is quoted as saying 'Well they get rid of them [pregnant agency workers] when they find out... There's nothing we can do about it... At the end of the day, without being disrespectful, if they ring up for 20 people they are looking for 20 arms and legs to do the job. They don't want 19 and a pregnant one who can't do this and can't do that'. The role of

employment agencies in pregnancy discrimination is re-enforced by a further study of 122 recruitment agencies which 'found that more than 70 per cent of agencies had been asked by clients to avoid hiring pregnant women or those of child bearing age'.<sup>42</sup>

A second Commission investigation took place into sex discrimination in the financial services industry<sup>43</sup> which also stated that even where companies have exemplary equality policies 'negative management attitudes towards women, particularly in relation to pregnancy and maternity leave, adversely affect women's career progression'.

There is other survey evidence that on this subject that has been collected since the EOC survey and it is worth quoting because it shows that there is a continuing problem about women suffering from disadvantage and discrimination arising from pregnancy and maternity. One survey commissioned by London law firm, Slater & Gordon<sup>44</sup>, for example, found that one in four mothers who had returned to work believed that they have been subjected to discrimination, either before or after the birth of their child; that some 51 per cent considered that their employers' and colleagues' attitude towards them changed when they fell pregnant and two thirds said things have been 'difficult' for them since they returned from maternity leave. There was a belief that they were overlooked for promotion and being forced to watch more junior employees progress faster up the career ladder was a common complaint. Nearly half of working mothers felt that having children halted their career progression, whilst a third described rising up the career ladder as a mum as 'impossible.' The website Mumsnet also published the results of a survey which it carried out.<sup>45</sup> Some 60 per cent of participants felt less employable since having a child and some 75 per cent said that it was harder to progress in their careers. Some 17 per cent said their line manager/employer was not supportive during pregnancy. Of these, nearly half (47 per cent) said they were made to feel guilty. On returning to work a quarter of respondents said their line manager/employer was not supportive and of these almost half (46 per cent) said that they were made to feel guilty for leaving on time to collect their child/children and some 26 per cent that they felt their job was under threat.

### *Being pregnant at work*

The EOC survey 2005<sup>46</sup> found that some 87 per cent of employers were either very supportive or supportive of them during their pregnancy. Some 12 per cent were not supportive. The main reasons why employers were regarded as supportive were because they were sympathetic/understanding/caring (54 per cent); they allowed time off for appointments/illness (30 per cent); they were treated 'normally' (15 per cent). The employers who were regarded as being unsupportive were regarded as giving no consideration to their pregnancy (64 per cent); there was a lack of health and safety checks (18 per cent) and a reluctance to grant reduced/flexible working or time off for appointments (14 per cent). There was also a 'small but significant minority' who said that their employer or manager was unhappy about letting them take maternity leave (7 per cent) or that they were put under pressure to hand in their notice (5 per cent).

The more recent DWP survey on maternity and paternity rights and women returners (2009/10) was a substantial survey with just over 2,000 face-to-face interviews conducted with mothers whose children were aged between 12 and 18 months in autumn 2009 and who had worked at some point in the 12 months before the baby's birth.<sup>47</sup> This survey found that the overwhelming majority of mothers experienced no unfair treatment at work during pregnancy (82 per cent of those with babies born in 2008, although this was down from 89 per cent compared to a previous survey in 2006). The main types of unfair treatment reported were unpleasant comments from the employer and/or colleagues (5 per cent) and being given unsuitable work or workloads (4 per cent). Some 3 per cent reported at least one of the following: discouraged from attending antenatal classes during work time; unfairly criticised or disciplined about performance at work; failed to gain promotion that they felt was

deserved or otherwise sidelined; denied access to training that would otherwise receive. A smaller percentage (2 per cent) reported being treated so poorly that they felt they had to leave and/or being bullied by a line manager/supervisor.

Health and safety and the associated risk assessments appear to be an issue for many. The TUC reported<sup>48</sup> that

most employers do not conduct risk assessments for new or expectant mothers. Surveys by both the TUC and the Equal Opportunities Commission have shown that most employers have ignored the regulations. In addition employers are not obliged to take these actions unless they have received written notification from the woman of her condition. However many women fear notifying their employer early on because they fear that the employer may discriminate against them. Every year there are around 1,500 potential tribunal cases involving pregnancy maternity-related discrimination. Of these the vast majority (over 90%) involved some breach of health and safety legislation.

Poor health and safety procedures can have specific negative impacts on pregnant women and 'Women forced to stop work because of unsatisfactory health and safety protections may take sick leave, commence maternity leave early or resign from their job. This reduces the length of maternity leave after the birth, reduces rates of maternity pay, and leaves some women without any entitlement to maternity leave or pay'.<sup>49</sup>

A further review of the literature<sup>50</sup> found that 'many of the physical and psychosocial challenges experienced during pregnancy occur during the first few weeks after conception', so there is a necessity to address the issues related to pregnancy in the workplace before it occurs. This is about the importance and effectiveness of family friendly policies.

### *Being on maternity leave*

The 2005 EOC survey showed that 8 per cent of respondents believed that they had been treated unfairly by their employer whilst on maternity leave. This compares to figures of 55 per cent who thought that they had been treated very fairly and a further 32 per cent who thought they had been treated fairly. Interestingly it was the higher earners (£30,000+ per annum) who were most likely to perceive unfair treatment (17 per cent). The women respondents were asked on a prompted basis about whether they had experienced different types of unfair treatment whilst on maternity leave. Some 2 per cent mentioned at least one of the following: failure to gain promotion or otherwise sidelined; reduction in salary or bonus; a pay rise or bonus that was less than their peers; being treated so poorly that felt they had to leave. A further 1 per cent mentioned at least one of the following: unpleasant comments from the employer and/or colleagues; being denied access to training that would otherwise have been received. The report summarised that

It is evident that women are more likely to experience poor treatment by their employer while still at work than on maternity leave. Just under one in ten women (nine per cent) had experienced negative treatment while on maternity leave, compared with a third who had experienced similar problems while still at work.

The DWP survey revealed that a substantial minority of women with babies born in 2008 were not aware of their correct legal entitlement to maternity leave. Only 69 per cent knew their correct entitlement, although the percentage varied according to occupational group. Some 82 per cent of professionals knew their entitlement to a year's leave compared to just 54 per cent amongst those in skilled, process and elementary occupations.

The survey also asked about 'keeping in touch' days which were introduced in 2007 as an optional opportunity for mothers on maternity leave to do some work related activities with the employer's consent. The most common forms of contact were face to face meetings (58 per cent) and telephone conversations (55 per cent). There did appear to be a correlation between the number of family friendly arrangements existing in a firm and the frequency of contact. Some 12 per cent of mothers reported no work-related contact with their employer during maternity leave. The highest proportion worked in process and elementary occupations (23 per cent). Some 14 per cent of mothers working in organisations without a trade union presence reported no contact with their employer, compared with 7 per cent of mothers in organisations with a trade union. Nearly half of the mothers surveyed (46 per cent) who were working for organisations without any family-friendly arrangements reported having no contact with their employer during maternity leave, compared to 6 per cent of mothers in organisations with five or more such arrangements.

### *Returning to work*

Mothers' employment decisions after the birth were clearly influenced by both opportunities and constraints. On one hand, mothers who had access to family-friendly arrangements, and who had received maternity pay were more likely to go back to work after childbirth. On the other, lone mothers, younger mothers and those with no qualifications were more likely to stay at home. This could partly reflect the greater difficulties these mothers faced, because of their weak labour market position.<sup>51</sup>

It has been estimated that around 1.4 per cent of working-age women, or about 250,000, return to the labour force each year,<sup>52</sup> and that more than three quarters of mothers who had worked before the birth, had returned to work when the child was 12-18 months old.<sup>53</sup> Many return to jobs for which they are over qualified, especially in those sectors where women's employment predominates.<sup>54</sup> This study found that women were over qualified in those occupations concerned with health and social welfare, caring personal service and the customer service occupations. This over qualification was not particularly in evidence for mothers in general but was much more so amongst recent returners to work, especially those that worked part time. This contributed to the pay penalty, so part-time recent returners tended to earn 22 per cent less, and full-time recent returners tend to earn 12 per cent less than others. Amongst mothers working part-time there was a wage penalty of some 16 per cent, but amongst mothers employed full-time there was no wage penalty other than the general female wage gap.<sup>55</sup>

One result of women having the predominant role in caregiving is an astonishing amount of occupational segregation. One report noted that 'Women and men tend to do different jobs....Women tend to work in lower paid occupations, in particular dominating the five "c"s – caring, cashiering, catering, cleaning, and clerical. The occupations which are regarded as "women's work" are under-valued'.<sup>56</sup> One of the reasons hypothesised for this was that there was a lack of flexibility associated with non-traditional jobs that would prevent women from balancing work and family obligations.<sup>57</sup> According to the report *Women in Northern Ireland*<sup>58</sup> there is a similar pattern. Some 92 per cent of female employees (96 per cent for part-time and 89 per cent for full-time) work in the service sector. This compares with 66 per cent for male employees. Of all female full-time employees, 53 per cent are employed in the public administration, education and health service sectors. This compares with 20 per cent of males. (In GB the figures were 50 per cent for females and 19 per cent for males).

Occupational downgrading occurs when more highly qualified women or men choose to reduce their working hours, usually for childcare reasons. However, more women than men do so, and women's choices are limited by expensive childcare and long full-time working hours in the UK, in comparison with other EU and OECD countries. The Government

Equalities Office's Report on quality part-time work<sup>59</sup> revealed that because of the limited part-time options available in highly skilled jobs, many women 'compromise by crowding into lower level jobs'.<sup>60</sup> The report also cited research that showed that up to 25 per cent of women who move to part-time work change to an occupation where the average qualification is lower than that of their previous job and that downgrading when moving to part-time work affects as many as 29 per cent of women from professional and corporate management jobs, and up to 40 per cent in intermediate-level jobs.<sup>61</sup>

The EOC pregnancy discrimination survey (2005)<sup>62</sup> found that some 27 per cent of respondents had experienced one or more types of negative treatment surrounding their return to work. The most common problem was not being allowed time off work to cope with illness or other problems connected with the baby (10 per cent). A smaller number had problems related to pay – either they received a pay rise that was less than their peers (4 per cent), or they had a salary reduction (6 per cent) or they failed to acquire a promotion that they felt they would otherwise have obtained (4 per cent). The majority of the returners worked fewer hours on their return (62 per cent) which contributed to a reduction in earnings. Many women requested the opportunity to work more flexibly on their return to work and many such requests were agreed. There was, however, a small minority who either had their requests rejected or were so convinced that their employer would not allow them to work more flexibly that they did not make a formal request. This included 6 per cent of women who would have liked to work part-time, 9 per cent who would have liked to reduce their hours in and 5 per cent who would have liked to work from home more often.

The National Childbirth Trust (NCT) carried out a web survey in 2007/8, on the experiences of mothers returning to work, with 1541 participating. The respondents were heavily skewed in favour of professional and managerial participants (79 per cent) but nevertheless it provided enough feedback for the report of the survey to conclude that

This survey<sup>63</sup> has found that mothers are not given enough support in returning to work after maternity leave. A poorly managed reintegration back into the workplace and lack of support often have a detrimental effect on women's well-being. Findings show that the attitudes and relationship between employee and line manager are pivotal in determining a smooth return to work.

A large proportion of the respondents were married or living as married (95 per cent); some 64 per cent were first time mothers and 60 per cent worked part time. The biggest reason for returning to work was financial with some 68 per cent giving this reason.<sup>64</sup> The respondents were asked to indicate their concerns about returning to work. These could be divided into personal and work concerns. The biggest concern overall was childcare with some 60 per cent giving this. In terms of work some 33 per cent were concerned about the attitude of their boss or colleagues; 21 per cent concerned about their ability to do parts of the job; 15 per cent about the ability to continue breastfeeding and 10 per cent were concerned about job availability. Overall some 31 per cent rated their return to work as 'difficult' or 'very difficult' and 11 per cent changed employer or became self-employed on or shortly after returning to work.

The report indicates the personal issues about returning to work and leaving a child with others.<sup>65</sup> These difficulties are exacerbated in a proportion of cases where work relationships change after the pregnancy is announced. In this survey some 31 per cent of mothers felt that the relationship with their boss had deteriorated since becoming pregnant and returning to work. Some 22 per cent felt this decline had happened after they had announced their pregnancy with 15 per cent saying that this had declined or deteriorated further on returning to work. Almost three quarters of the respondents experienced changes in their working patterns after the return with some 60 per cent of first time mothers working

fewer hours.<sup>66</sup> Some 23 per cent had a different role on return whilst some 20 per cent had the same role but with reduced responsibilities.

### *The right to ask for flexible working*

One report<sup>67</sup> states the following:

The right to request flexible working is a right to ask for a change in the hours, days or place of work. However, too many employers read a request to work flexibly as a request for a demotion. This applies to many parents' requests but particularly concerns women returning from maternity leave, often in managerial roles but without much decision-making power.

The same report quotes information from its legal helpline in these terms:

Our advisers found many more employers in 2012 were willing to turn down a request for flexible working without seriously considering the request. Other callers find that the flexible working patterns they have in place are being withdrawn overnight, with little consideration for childcare difficulties.

The evidence of the effect of the availability of flexible work arrangements on whether women return to work is not conclusive. The *Maternity and Paternity Rights Survey 2009/10* shows that 'a high proportion of non-returning mothers reported that no flexible work arrangements were available in their pre-birth jobs', and that a higher proportion of mothers who had flexible work arrangements available returned to work post-birth. Although this might suggest a causal relationship, an alternative possible explanation offered by the report is that 'those who had already decided for unrelated reasons that they did not want to return to work were less likely to have sought information on these topics'.

The Children and Families Act 2014<sup>68</sup> provides for the possibility of sharing maternity leave between the parents of a child (Part 7), the right for a 'qualifying employee' to accompany the mother to ante natal appointments (Part 8) and removing the requirement to be a carer for those requesting flexible working (Part 9). Generally this is welcomed as a move in the right direction, but with reservations<sup>69</sup>:

an increase in take up of paternity/shared parental leave by fathers has the potential to dismantle the '*motherhood penalty*' and to redress the high rates of pregnancy discrimination which force a significant number of women out of the workforce. Fawcett has concerns that the Children and Families Bill will not achieve its ambition of shifting the balance in caring roles without a significant increase in /fathers'/partners' take up of paternity and parental leave.

Others have raised issues including the importance of having reserved leave for fathers to encourage their participation; a legal right to protect those breastfeeding at work; and the limits placed upon time off for those sharing attendance at ante natal appointments.<sup>70</sup>

### *Multiple identities*

It is simplistic of course to just always consider women as a homogenous group and compare their disadvantage to men. Women have multiple identities which can affect the level of disadvantage, e.g. mothers from Black Caribbean and Black African communities are much more likely to be living as lone parents than those who are classified as White. One study found that some 48 per cent of Black Caribbean and 38 per cent of Black African mothers were lone parents compared to 13 per cent of White mothers. In addition some 30 per cent of Mixed Ethnic mothers were lone parents.<sup>71</sup> In terms of participation in the labour



market there were significant differences between ethnic groups especially between the relatively low levels of participation amongst Bangladeshi and Pakistani mothers when compared to the relatively high levels among Black Caribbean and White mothers. The report also showed that Bangladeshi mothers were the most likely among all the ethnic groups to live in workless households, with just over one fifth in such households. In contrast Indian mothers were the least likely to be in this category, with under 5 per cent in such households. This report partly concludes with the statement that

The evidence suggests that ethnicity matters, but differences between and within ethnic groups are also important for understanding differences in outcomes, for example between Indian mothers on the one hand and Pakistani and Bangladeshi mothers on the other.

Having said this, the qualitative study by the EOC<sup>72</sup> had found that there was little difference between the experiences, in relation to pregnancy discrimination, between women of different backgrounds, although it did highlight the fact that Asian women, in particular, 'felt that employers and/or colleagues might be making additional assumptions on the basis of their ethnic origin, presuming that they may go on to have more children or that they would choose to stay at home with their child rather than return to work'.<sup>73</sup>

A further group that suffer significant disadvantages are the parents of children with a disability. A survey of one thousand such parents found that many parents were 'being forced to decline promotion, accept lower skilled work, reduce hours of work or opt out of the labour market altogether in order to care for their disabled children. Furthermore the prospects of this group being able to return to the labour market are very poor'.<sup>74</sup> According to the survey report other research highlighted the fact that families of disabled children were at a greater risk of experiencing poverty, poor housing, social isolation and family break up.

#### **4. Career break and motherhood penalties**

It is clear that for some women childbirth results in downward mobility and lower rates of employment. One report noted that

Those who remain attached to a particular employer over the period of maternity are likely to stay in the same occupational category. A significant proportion of women who take a break from the labour market suffer downward mobility on re-entry to the labour market after childbirth/care.<sup>75</sup>

This report found, of the women that it surveyed, some 28 per cent suffered some downward mobility between having children and returning to the labour market. It revealed that some 41 per cent of women working as unskilled manual workers had held higher level jobs before childbirth. It concluded by stating that interruptions to employment constitute a major reason for lower levels of pay and productivity for women. It also showed that there was a correlation between levels of education and levels of employment, so that those with lower levels of education were more likely to have lower levels of employment.

One large piece of data analysis revealed that, in is sample, the probability of employment during pregnancy fell with birth order; from 91 per cent for the first birth to 72 per cent for mothers who already had one child to 50 per cent for those with three or more children at the time of pregnancy. The research indicated that the initial employment transition following childbirth affected the employment position up to when the child reached the age of three years, so employment during pregnancy and resuming with the same employer nine months after child birth was most conducive to the mother staying in continuous employment. According to the report authors the 'results demonstrate that returning to work nine months

after childbirth is a pivotal factor supporting a continuous employment profile for at least the next two and a quarter years'.<sup>76</sup>

The general position is summed up in this Fawcett Society statement:<sup>77</sup>

Motherhood, in particular, has a direct and dramatic influence on women's employment prospects and pay which typically lasts a lifetime. Many women return to work part-time after having children, but most part-time work is characterised by low pay with few prospects for training and promotion. The pay gap, combined with dramatically different leave entitlements for mothers and fathers when a child is born (one year for the mother, two weeks for the father) means that in most cases women continue to be primary carers for children. There is little support or encouragement for men to spend more time caring. This is bad for both fathers and children who would benefit if care was shared more equally but is also a key factor in the discrimination faced by women at work.

One solution supported by the Society is the sharing of child care leave between the parents.<sup>78</sup>

The pay detriment suffered from taking career breaks for domestic purposes are summed as follows:

Wage scarring arises from domestic work career interruptions. A year of working at home without pay causes a substantial reduction in the hourly wage upon return to work. This factor is compounded year on year. Another source of hourly pay reductions is working part time. The scale of the effect of part-time years worked is about half as large as the scarring impact of family care years.<sup>79</sup>

The same analysis looked the issue of productivity on returning to work from a family care break and concluded that 'the evidence suggests that plenty of women re-join at lower levels of pay than they left at, and that the resulting over qualification is damaging their pay'. Thus there is a wage penalty associated with taking career breaks<sup>80</sup> which can have long term repercussions on an individual's financial well-being. One US study found that the pay of women who temporarily leave the labour market not only falls behind on their return to work, but never actually catches up. The financial penalty can still be seen more than two decades after the end of the last career break.<sup>81</sup> Another study on this subject, published in 2009, analysed the pay penalty in a number of countries, including Britain.<sup>82</sup> The authors suggested three main reasons for the penalty. The first is associated with human capital theory where any absence from the labour market will cause some loss in human capital accumulation, including financial and skills losses, which will result in a permanent loss. The second reason is that withdrawal from the labour market to care for children re-enforces the traditional division of labour between the sexes and that women accommodate their careers, when compared to men, to cope with the dual role of child rearing and paid work. Women may reduce their hours and may move to less demanding jobs or sectors which can accommodate their dual roles. The third reason is associated with the results of motherhood in, for example, restricting mobility and changing employer perceptions about the individual worker resulting from taking the career break.

The calculation of the wage penalty itself is complex and will depend on factors such as the length of the breaks and whether the individual changed employers on a return to work, but the amount can be significant with 'one year of childcare- related work interruption carrying a wage penalty of a full 16%' and a change of employer after a career break representing for British women 'a 5% -- 6% wage cost'.

It is also said that the UK has one of the highest part-time pay penalties in Europe.<sup>83</sup> One study stated that, compared to women who work full time, part-time women are more likely to have low levels of education, to be in a couple, to have young and numerous children, to work in small establishments in distribution, hotels and restaurants and in low-level occupations.<sup>84</sup> The same study also stated that the 'occupational segregation of PT and FT women can explain most of the aggregate PT pay penalty. In particular, women who move from FT to PT work are much more likely to change employer and/or occupation than those who maintain their hour's status. And, when making this transition, they tend to make a downward occupational move'.

The high cost of childcare in the UK is given as one of the reasons why greater numbers of women work part time here than in many other countries.<sup>85</sup> One useful piece of research carried out for the Resolution Foundation and Mumsnet questioned whether women chose to work part time or felt forced to do so.<sup>86</sup> The overall outcome was that most women (70 per cent) in the survey who worked part-time with young children felt that they had freely chosen to do so, even though the great majority (93 per cent) had worked full time before having children and 67 per cent planned to increase their hours when the children were older. Many said that they did not, understandably, want to miss out on the early years of their child's life.

There were, however, important differences related to income. Over one third of women working part time in the low to middle income group and two fifths of those in the benefit reliant group said that working part-time had not been a choice. There was, according to the survey report, little difference in response by age of the youngest child and the responses from single parents did not differ significantly from those living with a partner. It was also evident that those from the lower income groups were much more likely to say that they were planning to increase their hours when their children were older than those from the higher income groups e.g. this was the view of 80 per cent of those from the benefit reliant group and 71 per cent of the lower to middle income group compared to some 56 per cent of the higher income group. Working part-time or moving from full to part-time employment carried with it a significant risk of moving downwards. Those employed part-time in the 2000s were at an 87 percent increased risk of downward mobility compared to those who were employed full-time throughout the decade.<sup>87</sup> However, the penalty for switching from full to part-time employment was less severe in the 2000s compared to the 1990s.

Other evidence of the part time penalty was the fact that 44 per cent of respondents said that they had taken a lower skilled (and therefore lower paid) job because they were working part time. In terms of barriers to working longer hours the report states that

A lack of affordable childcare appears to be the most important barrier to mothers working full-time. Overall, 44 percent specifically cited the lack of affordable quality childcare as a barrier. In addition, 43 percent said that it was not financially worth their while to work full-time. This is largely because the additional childcare costs that would be incurred would leave mothers with little take home pay.

The report of the survey concluded that there were three actions that would significantly improve the working lives of mothers with young children. These were greater access to affordable childcare; access to more flexible employment opportunities; and access to well paid, high skilled employment on a part-time basis.

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<sup>1</sup> See Malcolm Sargeant *Discrimination and the Law* Routledge 2013

<sup>2</sup> Statutory Instrument 1999/3312

<sup>3</sup> 1076 No 1042

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<sup>5</sup> See Employment Statutory Code of Practice chapter 8 Equality and Human Rights Commission 2011

<sup>6</sup> Department for Culture, Media & Sport; *Attitudes towards Equality* June 2014

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<sup>7</sup> Part-time workers, however, were less likely to agree that their current employer was supportive of working parents (47 per cent compared with 60 per cent). Part-time workers were also more likely to agree that sexism was still a problem in most workplaces (72 per cent compared with 61 per cent).

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<sup>13</sup> Office for National Statistics *Live Births in England and Wales by Characteristics of Mother 1, 2012* <http://www.ons.gov.uk/ons/rel/vsob1/characteristics-of-Mother-1--england-and-wales/2012/sb-characteristics-of-mother-1--2012.html>

<sup>14</sup> In 2012 there were 25,269 live births in Northern Ireland, of which 15,196 were born to women in the 25-34 year age bracket. Figures taken from website of Northern Ireland Statistics and Research Agency: <http://www.nisra.gov.uk/demography/default.asp8.htm>

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- <sup>65</sup> 34 per cent said it was difficult to adjust because of 'missing my child'.
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